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And to the appropriation  
of fees received under the  
Act for use by the  
department in administering the Act  
and to a lay midwifery  
board appointed by the Texas Board of  
Health, its powers and duties, defining  
an offense under this Act,

By Wiche

S.B. No. 238

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of lay midwives, <sup>and</sup> providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. DEFINITIONS. In this Act:

(1) "Approved lay midwifery training course" means a training course that satisfies the requirements established by the lay midwifery board and that is approved by the Texas Board of Health.

(2) "Certified nurse-midwife" means a person who is a registered nurse under the laws of this state and who is certified by the American College of Nurse-Midwives.

(3) "Department" means the Texas Department of Health.

(4) "Lay midwife" means a person who practices lay midwifery.

(5) "Lay midwifery" means the practice of assisting childbirth for compensation.

(6) "Normal childbirth" means the delivery, at or close to term, of a pregnant woman whose physical examination reveals no abnormality or signs or symptoms of complications.

(7) "Natural childbirth trainer" means a person who counsels expectant mothers in the techniques of giving birth without artificial or mechanical assistance, but does not assist at childbirth.

SECTION 2. EXCEPTIONS. This Act does not apply to a

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1 certified nurse-midwife, a natural childbirth trainer, a physician,  
2 a health care professional licensed by the state and operating  
3 within the scope of his license, or a person other than a lay  
4 midwife who assists childbirth in an emergency.

5 SECTION 3. LAY MIDWIFERY BOARD. The Texas Board of Health  
6 shall appoint a lay midwifery board composed of:

7 (1) three lay midwives with at least three years of  
8 experience in the practice of lay midwifery, no more than one of  
9 whom may be a licensed health care professional;

10 (2) one certified nurse-midwife;

11 (3) a person licensed to practice medicine who is certified  
12 by the American College of Obstetricians and Gynecologists;

13 (4) one person licensed to practice medicine who is  
14 certified by the American Board of Pediatricians; and

15 (5) three persons who are not practicing or trained in a  
16 health care profession and who represent the public interest.

17 SECTION 4. TERMS. The members of the lay midwifery board  
18 hold office for staggered terms of six years, with the terms of  
19 three members expiring on January 31 of each odd-numbered year.

20 SECTION 5. OFFICERS; QUORUM; MEETINGS. (a) The lay  
21 midwifery board shall elect a chairman from one of the public  
22 interest members and a vice-chairman from any of the other members.

23 (b) A majority of the members of the lay midwifery board  
24 constitutes a quorum. 2/3

25 (c) The lay midwifery board shall meet at least once during  
26 the first year of its existence and at other times at the call of  
27 the Texas Board of Health.

1           SECTION 6. EXPENSES. Members may not receive compensation  
2 for service on the lay midwifery board. Each member is entitled to  
3 receive \$50 for each meeting that the member attends, and the per  
4 diem and travel allowance authorized for state employees.

5           SECTION 7. EXECUTIVE SECRETARY; STAFF. (a) The department  
6 shall hire an executive secretary, after consultation with the lay  
7 midwifery board, to perform administrative duties, including  
8 keeping the minutes of lay midwifery board meetings, maintaining  
9 records about approved training courses, and maintaining records of  
10 persons who have received a letter of completion as described in  
11 this Act.

12           (b) The department shall pay the salaries of the executive  
13 secretary and that of any additional staff it determines to be  
14 necessary. The department shall provide office space and supplies  
15 for the executive secretary and other staff.

16           SECTION 8. DUTIES AND POWERS OF THE LAY MIDWIFERY BOARD AND  
17 THE TEXAS BOARD OF HEALTH. (a) Subject to the approval of the  
18 Texas Board of Health, the lay midwifery board shall:

19           (1) establish requirements for an approved lay midwifery  
20 training course;

21           (2) establish qualifications for the lay midwifery training  
22 course instructors;

23           (3) issue a lay midwifery training manual; <sup>3/4</sup>

24           (4) establish eligibility requirements for taking the final  
25 examination of a training course; and

26           (5) issue a final examination for a lay midwifery training  
27 course.

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(b) The Texas Board of Health shall review and act on the materials submitted by the lay midwifery board for approval not later than the 60th day after the date on which they are submitted. To implement this Act, the Texas Board of Health may adopt rules, enter contracts, and prepare and publish reports on the practice of lay midwifery in this state.

→ Insert Floor Am. # (QA)

SECTION 9. MANUAL. (a) The lay midwifery board shall approve a manual for the practice of lay midwifery. The department shall provide the manual to any person who requests it. An approved manual must include information about:

- (1) prenatal care;
- (2) normal childbirth;
- (3) signs, symptoms, and emergency management of complications that occur in childbirth;
- (4) screening for women who are at greater risk of childbirth complications;
- (5) anatomy of the human reproduction system;
- (6) sterile techniques and procedures;
- (7) delivery techniques to prevent vaginal lacerations; 4/5
- (8) emergency treatment of vaginal lacerations occurring during childbirth;
- (9) legal requirements and procedures for reporting births and deaths;
- (10) resuscitation of the newborn;
- (11) prophylactic treatment, screening, and diagnostic tests for newborns as required by law; and
- (12) other information or procedures as determined by the

1 department.

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2 (b) The department may charge a fee not to exceed \$10 for  
3 each manual it distributes. The department shall make the manual  
4 available in English and Spanish.

5 SECTION 10. TRAINING COURSE. (a) An approved lay midwifery  
6 training course may be offered by a local health department, an  
7 accredited postsecondary educational institution, or an adult  
8 education program. The entity offering the course may charge a  
9 reasonable fee for the course.

10 (b) If the department determines that the number of approved  
11 courses offered in a region designated by the department is  
12 insufficient to satisfy the demand for training in the region, the  
13 department shall make a training course available on a temporary  
14 basis through its regional office. The department may charge a fee  
15 not to exceed \$50 for a training course it conducts. The  
16 department may waive a portion of the fee charged to an individual.

17 (c) The training course shall be taught in Spanish if that  
18 is the only language a participant of the course understands. If <sup>5/6</sup>  
19 other course participants do not understand Spanish, the training  
20 course shall be taught in English and Spanish.

21 SECTION 11. EXAMINATION. (a) A person who has completed an  
22 approved lay midwifery training course or who has comparable  
23 training approved by the lay midwifery board is entitled to take  
24 the final examination of the training course.

25 (b) An applicant for examination shall submit to the  
26 department an application fee of \$25 and a completed application on  
27 a form prescribed by the lay midwifery board.

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1 (c) The department shall administer the final examination at  
2 its regional or local offices.

3 (d) The examination shall be administered in English and  
4 Spanish and may be offered in written or oral form.

5 SECTION 12. LETTER. The department shall grant a letter of  
6 completion to a person who passes the final examination.

7 SECTION 13. IDENTIFICATION REQUIREMENT. (a) In December of  
8 each year, a person who practices lay midwifery shall identify  
9 himself as a lay midwife by appearing in person before the county  
10 clerk of the county in which the person resides or before the  
11 county clerk of each county in which the person practices lay  
12 midwifery and delivering to the county clerk a verified  
13 identification form that contains:

14 (1) the person's name, residence, and post office address;

15 (2) the person's date and place of birth;

16 (3) the location of the person's practice according to  
17 counties; and *4/7*

18 (4) other information the department determines necessary  
19 for the identification of lay midwives.

20 (b) The identification form shall be prescribed by the  
21 department.

22 (c) The county clerk shall provide each lay midwife who  
23 identifies himself a notice of a lay midwife's legal  
24 responsibilities under the laws and rules of this state on a form  
25 prescribed by the department. Failure to receive the notice does  
26 not constitute a defense to prosecution for acts committed in  
27 violation of the laws and rules of this state.

1 (d) The county clerk shall retain for the county clerk's  
2 records a copy of each identification form. The county clerk shall  
3 send the original identification form to the department. The  
4 county clerk may charge a reasonable fee for these services under  
5 Article 3930, Revised Statutes.

6 SECTION 14. ADDITIONAL INFORMATION. (a) The department may  
7 require information in addition to that required by <sup>Subsection 13(a)</sup> Section 13 <sup>of this Act</sup>  
8 if it determines the additional information is necessary and  
9 appropriate to ascertain the nature and extent of lay midwifery in  
10 this state. The department may not require information regarding  
11 any act that is prohibited under this Act.

12 (b) Information received under this section may not be made  
13 public so as to disclose the identity of any person to whom the  
14 information relates. This information is not a public record as  
15 defined in Chapter 424, Acts of the 63rd Legislature, Regular <sup>7/8</sup>  
16 Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

17 (c) The department shall prescribe forms for the additional  
18 information and shall distribute those forms to the county clerks  
19 of this state.

20 (d) When a person identifies himself as a lay midwife under  
21 Section 13 of this Act, the county clerk shall give a copy of any  
22 form for additional information to the person. The person shall  
23 complete the form and return it with the identification form to the  
24 county clerk.

25 (e) The county clerk shall send these forms to the  
26 department.

27 SECTION 15. ROSTER. (a) The department shall maintain a

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1 roster of all persons identified to practice lay midwifery.

2 (b) The roster shall contain for each person the information  
3 required on the identification form of this Act and other  
4 information that the department determines necessary to identify  
5 with accuracy each lay midwife who is identified under this Act.  
6 This information shall be a public record as defined in Chapter  
7 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article  
8 6252-17a, Vernon's Texas Civil Statutes).

9 SECTION 16. DUTIES OF LAY MIDWIVES; DISCLOSURE REQUIREMENT.

10 (a) Each lay midwife shall disclose in oral and written form to a  
11 prospective client the limitations of the skills and practices of a  
12 lay midwife.

13 (b) The department, with the advice of the lay midwifery  
14 board, shall prescribe the form of the written disclosure required  
15 by this section, which shall include the information that a lay  
16 midwife:

17 (1) may assist only in normal childbirth;

18 (2) has or does not have an arrangement with a local  
19 physician for referring patients who have complications that occur  
20 before or during childbirth;

21 (3) may not administer a prescription drug without a  
22 physician's supervision, perform a Caesarean section, or perform an  
23 episiotomy; and

24 (4) has or has not passed the lay midwife training course  
25 final examination approved by the board.

26 (c) The written disclosure required by this section may not  
27 exceed 500 words and must be in English and Spanish.



1 (d) A lay midwife shall have each client sign a written  
2 disclosure form, and shall send the form to the department not  
3 later than the 30th day after the date of the birth.

4 (e) A lay midwife shall encourage a client to seek prenatal  
5 care.

6 (f) A lay midwife shall encourage a client to seek medical  
7 care if the lay midwife recognizes a sign or symptom of a  
8 complication to the client's childbirth.

9 ~~SECTION 17. PROHIBITED ACTS.~~ *Insert Floor am. #2 (B)* A lay midwife may not:

10 (1) administer a prescription drug to a client except under  
11 the supervision of a licensed physician in accordance with the laws  
12 of this state;

13 (2) use forceps or surgical instruments for any procedure  
14 other than cutting the umbilical cord or providing emergency first  
15 aid during delivery;

16 (3) remove placenta by invasive techniques;

17 (4) advance or retard labor or delivery by using medicines  
18 or mechanical devices;

19 (5) use in connection with his name a title, abbreviation,  
20 or any designation tending to imply that he is a "registered" or  
21 "certified" lay midwife as opposed to one who has identified  
22 himself in compliance with this Act; or

23 (6) assist at childbirth other than a normal childbirth  
24 except in an emergency situation that poses an immediate threat to  
25 the life of the mother or newborn.

26 SECTION 18. PENALTIES. (a) A lay midwife commits an  
27 offense if the lay midwife knowingly or intentionally commits an

1 act prohibited by this Act.

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2 (b) An offense under this section is a Class C misdemeanor.

3 (c) A lay midwife who knowingly or intentionally fails to  
4 comply with the disclosure requirement of this Act commits a Class  
5 C misdemeanor.

6 (d) A lay midwife who knowingly or intentionally fails to  
7 comply with the identification requirement of this Act commits a  
8 Class C misdemeanor.

9 SECTION 19. EFFECT ON LOCAL ORDINANCES. This Act does not  
10 prohibit an incorporated city or town from adopting a local  
11 ordinance to regulate the practice of lay midwifery within its  
12 corporate limits if the ordinance is at least as strict as this  
13 Act.

14 SECTION 20. FUNDS. All fees received by the department  
15 under this Act shall be deposited in the state treasury to the  
16 credit of the general revenue fund and shall be appropriated to the  
17 department to defray the costs of this Act.

18 SECTION 21. REPEALER. Section 16, Chapter 41, Acts of the  
19 40th Legislature, 1st Called Session, 1927 (Rule 49a, Article 4477,  
20 Vernon's Texas Civil Statutes), is repealed.

21 SECTION 22. INITIAL APPOINTMENTS. In making the initial  
22 appointments to the lay midwifery board, the Texas Board of Health  
23 shall designate one lay midwife, one public interest  
24 representative, and the obstetrician for terms expiring January 31,  
25 1985, one lay midwife, one public interest representative, and the  
26 certified nurse-midwife for terms expiring January 31, 1987, and  
27 one lay midwife, one public interest representative, and the

1     pediatrician for terms expiring January 31, 1989.

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2             SECTION 23. REPORT. The department shall study the practice  
3     of lay midwifery in the state, including the quality of the  
4     services provided by lay midwives and the efficacy of the training  
5     program, disclosure requirements, and prohibitions established in  
6     this Act. The department shall report the results of this study to  
7     the regular session of the 71st Legislature. In the report, the  
8     department shall analyze the training program <sup>b</sup> and shall recommend <sup>1/2</sup>  
9     that the program be:

- 10            (1) continued as enacted;  
11            (2) continued with amendments;  
12            (3) made mandatory; or  
13            (4) discontinued.

14            SECTION 24. EFFECTIVE DATE. (a) Except as provided by  
15     Subsection (b) of this section, this Act takes effect September 1,  
16     1983.

17            <sup>*Subsection (a), and sections 17 and 18*</sup>  
18     (b) <sup>b</sup> Sections ~~16~~ <sup>17 and 18</sup> of this Act take effect on  
18     September 1, 1984.

19            SECTION 25. EMERGENCY. The importance of this legislation  
20     and the crowded condition of the calendars in both houses create an  
21     emergency and an imperative public necessity that the  
22     constitutional rule requiring bills to be read on three several  
23     days in each house be suspended, and this rule is hereby suspended.

1 By: Uribe

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2 (In the Senate - Filed January 25, 1983; January 26, 1983,  
3 read first time and referred to Committee on Health and Human  
4 Resources; February 8, 1983, reported favorably; February 8,  
5 1983, sent to printer.)

6 A BILL TO BE ENTITLED  
7 AN ACT

8 relating to the regulation of lay midwives and to a lay midwifery  
9 board appointed by the Texas Board of Health, its powers and  
10 duties; defining an offense under this Act; and providing  
11 penalties.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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16 lay midwifery board and that is approved by the Texas Board of  
17 Health.

18 (2) "Certified nurse-midwife" means a person who is a  
19 registered nurse under the laws of this state and who is certified  
20 by the American College of Nurse-Midwives.

21 (3) "Department" means the Texas Department of Health.

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23 midwifery.

24 (5) "Lay midwifery" means the practice of assisting  
25 childbirth for compensation.

26 (6) "Normal childbirth" means the delivery, at or close to  
27 term, of a pregnant woman whose physical examination reveals no  
28 abnormality or signs or symptoms of complications.

29 (7) "Natural childbirth trainer" means a person who counsels  
30 expectant mothers in the techniques of giving birth without  
31 artificial or mechanical assistance, but does not assist at  
32 childbirth.

33 SECTION 2. EXCEPTIONS. This Act does not apply to a  
34 certified nurse-midwife, a natural childbirth trainer, a physician,  
35 a health care professional licensed by the state and operating  
36 within the scope of his license, or a person other than a lay  
37 midwife who assists childbirth in an emergency.

38 SECTION 3. LAY MIDWIFERY BOARD. The Texas Board of Health  
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45 by the American College of Obstetricians and Gynecologists;

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47 certified by the American Board of Pediatricians; and

48 (5) three persons who are not practicing or trained in a  
49 health care profession and who represent the public interest.

50 SECTION 4. TERMS. The members of the lay midwifery board  
51 hold office for staggered terms of six years, with the terms of  
52 three members expiring on January 31 of each odd-numbered year.

53 SECTION 5. OFFICERS; QUORUM; MEETINGS. (a) The lay  
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55 interest members and a vice-chairman from any of the other members.

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57 constitutes a quorum.

58 (c) The lay midwifery board shall meet at least once during  
59 the first year of its existence and at other times at the call of  
60 the Texas Board of Health.

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62 for service on the lay midwifery board. Each member is entitled to  
63 receive \$50 for each meeting that the member attends and the per  
64 diem and travel allowance authorized for state employees.

65 SECTION 7. EXECUTIVE SECRETARY; STAFF. (a) The department  
66 shall hire an executive secretary after consultation with the lay  
67 midwifery board to perform administrative duties, including keeping  
68 the minutes of lay midwifery board meetings, maintaining records  
69 about approved training courses, and maintaining records of persons

1 who have received a letter of completion as described in this Act.

2 (b) The department shall pay the salaries of the executive  
3 secretary and that of any additional staff it determines to be  
4 necessary. The department shall provide office space and supplies  
5 for the executive secretary and other staff.

6 SECTION 8. DUTIES AND POWERS OF THE LAY MIDWIFERY BOARD AND  
7 THE TEXAS BOARD OF HEALTH. (a) Subject to the approval of the  
8 Texas Board of Health, the lay midwifery board shall:

9 (1) establish requirements for an approved lay midwifery  
10 training course;

11 (2) establish qualifications for the lay midwifery training  
12 course instructors;

13 (3) issue a lay midwifery training manual;

14 (4) establish eligibility requirements for taking the final  
15 examination of a training course; and

16 (5) issue a final examination for a lay midwifery training  
17 course.

18 (b) The Texas Board of Health shall review and act on the  
19 materials submitted by the lay midwifery board for approval not  
20 later than the 60th day after the date on which they are submitted.  
21 To implement this Act, the Texas Board of Health may adopt rules,  
22 enter contracts, and prepare and publish reports on the practice of  
23 lay midwifery in this state.

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25 approve a manual for the practice of lay midwifery. The department  
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27 approved manual must include information about:

28 (1) prenatal care;

29 (2) normal childbirth;

30 (3) signs, symptoms, and emergency management of  
31 complications that occur in childbirth;

32 (4) screening for women who are at greater risk of  
33 childbirth complications;

34 (5) anatomy of the human reproduction system;

35 (6) sterile techniques and procedures;

36 (7) delivery techniques to prevent vaginal lacerations;

37 (8) emergency treatment of vaginal lacerations occurring  
38 during childbirth;

39 (9) legal requirements and procedures for reporting births  
40 and deaths;

41 (10) resuscitation of the newborn;

42 (11) prophylactic treatment, screening, and diagnostic tests  
43 for newborns as required by law; and

44 (12) other information or procedures as determined by the  
45 department.

46 (b) The department may charge a fee not to exceed \$10 for  
47 each manual it distributes. The department shall make the manual  
48 available in English and Spanish.

49 SECTION 10. TRAINING COURSE. (a) An approved lay midwifery  
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51 accredited postsecondary educational institution, or an adult  
52 education program. The entity offering the course may charge a  
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54 (b) If the department determines that the number of approved  
55 courses offered in a region designated by the department is  
56 insufficient to satisfy the demand for training in the region, the  
57 department shall make a training course available on a temporary  
58 basis through its regional office. The department may charge a fee  
59 not to exceed \$50 for a training course it conducts. The  
60 department may waive a portion of the fee charged to an individual.

61 (c) The training course shall be taught in Spanish if that  
62 is the only language a participant of the course understands. If  
63 other course participants do not understand Spanish, the training  
64 course shall be taught in English and Spanish.

65 SECTION 11. EXAMINATION. (a) A person who has completed an  
66 approved lay midwifery training course or who has comparable  
67 training approved by the lay midwifery board is entitled to take  
68 the final examination of the training course.

69 (b) An applicant for examination shall submit to the  
70 department an application fee of \$25 and a completed application on

1 a form prescribed by the lay midwifery board.

2 (c) The department shall administer the final examination at  
3 its regional or local offices.

4 (d) The examination shall be administered in English and  
5 Spanish and may be offered in written or oral form.

6 SECTION 12. LETTER. The department shall grant a letter of  
7 completion to a person who passes the final examination.

8 SECTION 13. IDENTIFICATION REQUIREMENT. (a) In December of  
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10 himself as a lay midwife by appearing in person before the county  
11 clerk of the county in which the person resides or before the  
12 county clerk of each county in which the person practices lay  
13 midwifery and delivering to the county clerk a verified  
14 identification form that contains:

15 (1) the person's name, residence, and post office address;

16 (2) the person's date and place of birth;

17 (3) the location of the person's practice according to  
18 counties; and

19 (4) other information the department determines necessary  
20 for the identification of lay midwives.

21 (b) The identification form shall be prescribed by the  
22 department.

23 (c) The county clerk shall provide each lay midwife who  
24 identifies himself a notice of a lay midwife's legal  
25 responsibilities under the laws and rules of this state on a form  
26 prescribed by the department. Failure to receive the notice does  
27 not constitute a defense to prosecution for acts committed in  
28 violation of the laws and rules of this state.

29 (d) The county clerk shall retain for the county clerk's  
30 records a copy of each identification form. The county clerk shall  
31 send the original identification form to the department. The  
32 county clerk may charge a reasonable fee for these services under  
33 Article 3930, Revised Statutes.

34 SECTION 14. ADDITIONAL INFORMATION. (a) The department may  
35 require information in addition to that required by Subsection (a)  
36 of Section 13 of this Act if it determines the additional  
37 information is necessary and appropriate to ascertain the nature  
38 and extent of lay midwifery in this state. The department may not  
39 require information regarding any act that is prohibited under this  
40 Act.

41 (b) Information received under this section may not be made  
42 public so as to disclose the identity of any person to whom the  
43 information relates. This information is not a public record as  
44 defined in Chapter 424, Acts of the 63rd Legislature, Regular  
45 Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

46 (c) The department shall prescribe forms for the additional  
47 information and shall distribute those forms to the county clerks  
48 of this state.

49 (d) When a person identifies himself as a lay midwife under  
50 Section 13 of this Act, the county clerk shall give a copy of any  
51 form for additional information to the person. The person shall  
52 complete the form and return it with the identification form to the  
53 county clerk.

54 (e) The county clerk shall send these forms to the  
55 department.

56 SECTION 15. ROSTER. (a) The department shall maintain a  
57 roster of all persons identified to practice lay midwifery.

58 (b) The roster shall contain for each person the information  
59 required on the identification form of this Act and other  
60 information that the department determines necessary to identify  
61 with accuracy each lay midwife who is identified under this Act.  
62 This information shall be a public record as defined in Chapter  
63 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article  
64 6252-17a, Vernon's Texas Civil Statutes).

65 SECTION 16. DUTIES OF LAY MIDWIVES; DISCLOSURE REQUIREMENT.

66 (a) Each lay midwife shall disclose in oral and written form to a  
67 prospective client the limitations of the skills and practices of a  
68 lay midwife.

69 (b) The department with the advice of the lay midwifery  
70 board shall prescribe the form of the written disclosure required

by this section, which shall include the information that a lay midwife:

(1) may assist only in normal childbirth;

(2) has or does not have an arrangement with a local physician for referring patients who have complications that occur before or during childbirth;

(3) may not administer a prescription drug without a physician's supervision, perform a Caesarean section, or perform an episiotomy; and

(4) has or has not passed the lay midwife training course final examination approved by the board.

(c) The written disclosure required by this section may not exceed 500 words and must be in English and Spanish.

(d) A lay midwife shall have each client sign a written disclosure form and shall send the form to the department not later than the 30th day after the date of the birth.

(e) A lay midwife shall encourage a client to seek prenatal care.

(f) A lay midwife shall encourage a client to seek medical care if the lay midwife recognizes a sign or symptom of a complication to the client's childbirth.

SECTION 17. PROHIBITED ACTS. A lay midwife may not:

(1) administer a prescription drug to a client except under the supervision of a licensed physician in accordance with the laws of this state;

(2) use forceps or surgical instruments for any procedure other than cutting the umbilical cord or providing emergency first aid during delivery;

(3) remove placenta by invasive techniques;

(4) advance or retard labor or delivery by using medicines or mechanical devices;

(5) use in connection with his name a title, abbreviation, or any designation tending to imply that he is a "registered" or "certified" lay midwife as opposed to one who has identified himself in compliance with this Act; or

(6) assist at childbirth other than a normal childbirth except in an emergency situation that poses an immediate threat to the life of the mother or newborn.

SECTION 18. PENALTIES. (a) A lay midwife commits an offense if the lay midwife knowingly or intentionally commits an act prohibited by this Act.

(b) An offense under this section is a Class C misdemeanor.

(c) A lay midwife who knowingly or intentionally fails to comply with the disclosure requirement of this Act commits a Class C misdemeanor.

(d) A lay midwife who knowingly or intentionally fails to comply with the identification requirement of this Act commits a Class C misdemeanor.

SECTION 19. EFFECT ON LOCAL ORDINANCES. This Act does not prohibit an incorporated city or town from adopting a local ordinance to regulate the practice of lay midwifery within its corporate limits if the ordinance is at least as strict as this Act.

SECTION 20. FUNDS. All fees received by the department under this Act shall be deposited in the State Treasury to the credit of the General Revenue Fund and shall be appropriated to the department to defray the costs of this Act.

SECTION 21. REPEALER. Section 16, Chapter 41, Acts of the 40th Legislature, 1st Called Session, 1927 (Rule 49a, Article 4477, Vernon's Texas Civil Statutes), is repealed.

SECTION 22. INITIAL APPOINTMENTS. In making the initial appointments to the lay midwifery board, the Texas Board of Health shall designate one lay midwife, one public interest representative, and the obstetrician for terms expiring January 31, 1985, one lay midwife, one public interest representative, and the certified nurse-midwife for terms expiring January 31, 1987, and one lay midwife, one public interest representative, and the pediatrician for terms expiring January 31, 1989.

SECTION 23. REPORT. The department shall study the practice of lay midwifery in the state, including the quality of the

1 services provided by lay midwives and the efficacy of the training  
2 program, disclosure requirements, and prohibitions established in  
3 this Act. The department shall report the results of this study to  
4 the regular session of the 71st Legislature. In the report, the  
5 department shall analyze the training program and shall recommend  
6 that the program be:

- 7 (1) continued as enacted;
- 8 (2) continued with amendments;
- 9 (3) made mandatory; or
- 10 (4) discontinued.

11 SECTION 24. EFFECTIVE DATE. (a) Except as provided by  
12 Subsection (b) of this section, this Act takes effect September 1,  
13 1983.

14 (b) Subsection (a), Section 16, and Sections 17 and 18 of  
15 this Act take effect on September 1, 1984.

16 SECTION 25. EMERGENCY. The importance of this legislation  
17 and the crowded condition of the calendars in both houses create an  
18 emergency and an imperative public necessity that the  
19 constitutional rule requiring bills to be read on three several  
20 days in each house be suspended, and this rule is hereby suspended.

21 \* \* \* \* \*

22 Austin, Texas  
23 February 8, 1983

24 Hon. William P. Hobby  
25 President of the Senate

26 Sir:

27 We, your Committee on Health and Human Resources to which was  
28 referred S.B. No. 238, have had the same under consideration, and  
29 I am instructed to report it back to the Senate with the  
30 recommendation that it do pass and be printed.

31 Brooks, Chairman



## BILL ANALYSIS

By: URIBE

S.B. 238

### Background Information:

According to the Texas Department of Health, the number of deliveries attended by lay midwives in Texas is steadily increasing and further regulation of lay midwives is needed in order to promote the safer practice of lay midwifery throughout the state.

Lay midwives are persons who receive compensation for assisting in childbirth. Currently in Texas there is great diversity in the degree of knowledge and skill levels possessed by lay midwives; some may have received specialized training, while others may merely be self-taught.

Although a few statutes refer to lay midwifery, no single law comprehensively defines the duties, responsibilities, or limitations of the practice of lay midwifery in Texas. Current statutes require lay midwives to register with county registrars and to perform such activities as placing prophylactic drops in newborn infants' eyes, reporting any inflammations in newborn infants' eyes, filing birth and death certificates, and testing for syphilis.

In Banti v. State the Texas Court of Criminal Appeals held that a lay midwife was not practicing medicine when assisting with a normal childbirth. A more recent Attorney General's opinion held that lay midwives may provide services which are incidental to normal childbirth. These rulings have created some confusion about the legality and scope of the practice of lay midwifery in Texas.

### What the Bill Proposes to Do:

Establishes a lay midwifery board and specifies board composition, terms of office, activities, duties and terms of initial appointment; directs the Department of Health to provide staff salaries, office space, and supplies; enables Department to adopt rules and enter contracts on the practice

of lay midwifery; calls for and delineates the provision of lay midwifery manual, training course, and examination; requires formal identification of lay midwives, including public roster; requires lay midwife to complete disclosure form provided by the department and to encourage appropriate prenatal and medical care; specifies prohibited lay midwife activities; establishes penalty for violation of Act; allows local ordinances on lay midwifery; specifies deposit and reappropriation of collected fees; repeals existing legislation; directs department to study and make a report to the 71st Legislature on the practice of lay midwifery.

Section by Section Analysis:

SECTION 1. DEFINITIONS.

SECTION 2. EXEMPTIONS. Lists persons who are exempt from this Act.

SECTION 3. LAY MIDWIFERY BOARD. Calls for the Texas Board of Health to appoint a lay midwifery board and specifies board composition.

SECTION 4. TERMS. Specifies terms of office for board members.

SECTION 5. OFFICERS: QUORUM, MEETINGS. Directs board to elect chairman and vice-chairman; defines quorum; specifies board's meeting times.

SECTION 6. EXPENSES. Stipulates that board members may not receive compensation for service, but may receive \$50 per meeting attended, per diem, and travel allowance.

SECTION 7. EXECUTIVE SECRETARY: STAFF. Directs the Department of Health to hire an executive secretary and specifies duties to be performed, directs the department to pay staff salaries and provide office space and supplies.

SECTION 8. DUTIES AND POWERS OF THE LAY MIDWIFERY BOARD AND THE TEXAS BOARD OF HEALTH. Specifies the duties of the lay midwifery board and subjects such duties to the approval

SECTION 8. (Continued) of the Texas Board of Health; directs the Texas Board of Health to review and act within sixty days on materials submitted by the lay midwifery board; enables Board of Health to adopt rules, enter contracts, and prepare and publish reports on the practice of lay midwifery.

SECTION 9. MANUAL. Directs the lay midwifery board to approve a manual for the practice of lay midwifery; calls for the department to provide the manual to the public; specifies information to be included in the manual; enables the department to charge maximum of \$10 for each manual; calls for manual to be available in both English and Spanish.

SECTION 10. TRAINING COURSE. Enables provision of an approved lay midwifery training course by local health department, accredited postsecondary educational institution, or an adult education program; allows reasonable fee to be charged for course; directs department to provide training course on temporary basis if it determines there exists an insufficient number of approved courses in a specific region; allows fee for course to be charged and partially waived; provides for course to be conducted in Spanish as appropriate.

SECTION 11. EXAMINATION. Entitles person completing approved lay midwifery training course or comparable training to take training course final examination; specifies requirements for examination application; directs department to administer final examination; calls for examination to be administered in Spanish and English; allow examination to be offered in written and oral form.

SECTION 12. LETTER. Directs the department to grant letter of completion to persons passing final examination.

SECTION 13. IDENTIFICATION REQUIREMENT. Requires lay midwives to identify themselves personally as such before a county clerk; specifies contents of identification form; directs department to provide identification form; specifies county clerk's duties in providing midwives with notice of legal responsibilities and handling identification forms.

SECTION 14. ADDITIONAL INFORMATION. Enables department to obtain information as needed, unless regards any act prohibited under this Act; prohibits public disclosure of information obtained; directs department to prescribe and distribute forms; specifies county clerk's responsibilities in handling of forms.

SECTION 15. ROSTER. Directs department to maintain roster of lay midwives; specifies content of roster; defines information obtained as public record.

SECTION 16. DUTIES OF LAY MIDWIVES: DISCLOSURE REQUIREMENT. Directs midwife to disclose to prospective clients limitations of skills and practice; requires department to provide disclosure form and specifies form's content; delineates lay midwife's responsibilities regarding disclosure form; directs lay midwife to encourage client to seek prenatal and needed medical care.

SECTION 17. PROHIBITED ACTS. Lists activities which may not be performed by a lay midwife.

SECTION 18. PENALTIES. Deems that the penalty for violating this Act is a Class C misdemeanor.

SECTION 19. EFFECT ON LOCAL ORDINANCES. Allows incorporated city or town to adopt local ordinance pertaining to lay midwifery which is at least as strict as this Act.

SECTION 20. FUNDS. Requires collected fees to be deposited in state treasury and reappropriated to the department to defray costs of this Act.

SECTION 21. REPEALER. Repeals Rule 49a, Article 4477, V.T.C.S.

SECTION 22. INITIAL APPOINTMENTS. Delineates terms of initial appointment to lay midwifery board.

SECTION 23. REPORT. Directs the department to study the practice of lay midwifery in Texas and to report results of study of 71st Legislature; specifies focus of study and report.

SECTION 24. EFFECTIVE DATE. Cites effective date of Sections 16(a), 17, and 18 of this Act of September 1, 1984, and remaining sections of Act as September 1, 1983.

SECTION 25. EMERGENCY CLAUSE.

Rulemaking Authority:

It is the committee's opinion that rulemaking authority is delegated to the Texas Board of Health in SECTION 8 of this Act.

Fiscal Impact:

The Fiscal implication of this bill was considered in the preparation of the fiscal note by the Legislative Budget Board.

EU  
2/4/83

# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE

February 7, 1983

Honorable Chet Brooks, Chairman  
Committee on Health and Human Resources  
Senate Chamber  
Austin, Texas

In Re: Senate Bill No. 238  
By: Uribe

Sir:

In response to your request for a Fiscal Note on Senate Bill No. 238 (relating to the regulation of lay midwives) this office has determined the following:

The bill would make an appropriation of certain fees and could provide the legal basis for a request for General Revenue Funds to implement the provisions of the bill.


The bill would provide for the regulation of lay midwives by the Texas Department of Health, with the assistance of an advisory board. Application, training and book fees are provided within specified limits. Such fees would be deposited in the General Revenue Fund and appropriated for the purpose of carrying out the provisions of the Act.

County clerks would be required to maintain records for the registration of lay midwives, for which they may charge fees.

The probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

<u>Fiscal Year</u>	<u>Out of the General Revenue Fund</u>	<u>Fees Deposited to the General Revenue Fund but Appropriated for Specific Use</u>	<u>Change in Number of State Employees from FY 1983</u>
1984	\$120,216	\$19,912	+ 3
1985	83,380	19,912	+ 3
1986	83,380	19,912	+ 3
1987	83,380	19,912	+ 3
1988	83,380	19,912	+ 3

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

  
Jim Oliver  
Director

Source: Department of Health;  
LBB Staff: JO, JH, GR, PA

TF-e  
2/17

JEH 5/26/83

C.R. 3/1/83

FLOOR AMENDMENT # 1

BY Hewitt

Amends SB 238, Section 8, by adding subsection (c) as follows:

(A) (c) <sup>b</sup> The department shall establish a procedure for reporting and processing complaints relating to lay midwifery practice in Texas.

and Section 16, by adding subsection (g) as follows:

(B) (g) <sup>b</sup> Each lay midwife shall disclose to a prospective or actual client the procedure for reporting complaints with the department.

p. 9

**ADOPTED**

FEB 17 1983

*Barry King*  
Secretary of the Senate

Floor am. # ①  
2/17/83

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BY Hewitt

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(g). Each lay midwife shall disclose to a prospective or actual client the procedure for reporting complaints with the department.

*no  
change  
in caption  
J.S.  
2-17-83*

**ADOPTED**

FEB 17 1983

*Betty King*  
Secretary of the Senate



AMEND THE CAPTION TO CONFORM  
TO THE BODY OF THE BILL

**ADOPTED**

FEB 17 1983

*Betsy King*  
Secretary of the Senate

B.G.N.

JAN 25 1983

caption  
1/28/83

By Wiley

S.B. No. 238

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of lay midwives; providing penalties.

to a law appointed by  
the Board of Health  
to define an  
offense under  
this Act

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. DEFINITIONS. In this Act:

(1) "Approved lay midwifery training course" means a training course that satisfies the requirements established by the lay midwifery board and that is approved by the Texas Board of Health.

(2) "Certified nurse-midwife" means a person who is a registered nurse under the laws of this state and who is certified by the American College of Nurse-Midwives.

(3) "Department" means the Texas Department of Health.

(4) "Lay midwife" means a person who practices lay midwifery.

(5) "Lay midwifery" means the practice of assisting childbirth for compensation.

(6) "Normal childbirth" means the delivery, at or close to term, of a pregnant woman whose physical examination reveals no abnormality or signs or symptoms of complications.

(7) "Natural childbirth trainer" means a person who counsels expectant mothers in the techniques of giving birth without artificial or mechanical assistance, but does not assist at childbirth.

SECTION 2. ~~EXCEPTIONS~~. This Act does not apply to a

1983 MAR -1 PM 3:43

HOUSE OF REPRESENTATIVES

Feb. 17 1982 Engrossed  
Patsy Law  
Engrossing Clerk

I certify that the attached is a true and correct  
copy of S.B. 238, which was  
received from the Senate on FEB 21 1983 and  
referred to the Committee on Public Health

Becky Messing  
Chief Clerk of the House

By: Uribe

S.B. No. 238

(D. Lee, Jackson)

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of lay midwives and to a lay midwifery board appointed by the Texas Board of Health, its powers and duties; defining an offense under this Act; and providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. DEFINITIONS. In this Act:

(1) "Approved lay midwifery training course" means a training course that satisfies the requirements established by the lay midwifery board and that is approved by the Texas Board of Health.

(2) "Certified nurse-midwife" means a person who is a registered nurse under the laws of this state and who is certified by the American College of Nurse-Midwives.

(3) "Department" means the Texas Department of Health.

(4) "Lay midwife" means a person who practices lay midwifery.

(5) "Lay midwifery" means the practice of assisting childbirth for compensation.

(6) "Normal childbirth" means the delivery, at or close to term, of a pregnant woman whose physical examination reveals no abnormality or signs or symptoms of complications.

(7) "Natural childbirth trainer" means a person who counsels expectant mothers in the techniques of giving birth without artificial or mechanical assistance, but does not assist at

1 childbirth.

2 SECTION 2. EXCEPTIONS. This Act does not apply to a  
3 certified nurse-midwife, a natural childbirth trainer, a physician,  
4 a health care professional licensed by the state and operating  
5 within the scope of his license, or a person other than a lay  
6 midwife who assists childbirth in an emergency.

7 SECTION 3. LAY MIDWIFERY BOARD. The Texas Board of Health  
8 shall appoint a lay midwifery board composed of:

9 (1) three lay midwives with at least three years of  
10 experience in the practice of lay midwifery, no more than one of  
11 whom may be a licensed health care professional;

12 (2) one certified nurse-midwife;

13 (3) a person licensed to practice medicine who is certified  
14 by the American College of Obstetricians and Gynecologists;

15 (4) one person licensed to practice medicine who is  
16 certified by the American Board of Pediatricians; and

17 (5) three persons who are not practicing or trained in a  
18 health care profession and who represent the public interest.

19 SECTION 4. TERMS. The members of the lay midwifery board  
20 hold office for staggered terms of six years, with the terms of  
21 three members expiring on January 31 of each odd-numbered year.

22 SECTION 5. OFFICERS; QUORUM; MEETINGS. (a) The lay  
23 midwifery board shall elect a chairman from one of the public  
24 interest members and a vice-chairman from any of the other members.

25 (b) A majority of the members of the lay midwifery board  
26 constitutes a quorum.

1           (c) The lay midwifery board shall meet at least once during  
2 the first year of its existence and at other times at the call of  
3 the Texas Board of Health.

4           SECTION 6. EXPENSES. Members may not receive compensation  
5 for service on the lay midwifery board. Each member is entitled to  
6 receive \$50 for each meeting that the member attends and the per  
7 diem and travel allowance authorized for state employees.

8           SECTION 7. EXECUTIVE SECRETARY; STAFF. (a) The department  
9 shall hire an executive secretary after consultation with the lay  
10 midwifery board to perform administrative duties, including keeping  
11 the minutes of lay midwifery board meetings, maintaining records  
12 about approved training courses, and maintaining records of persons  
13 who have received a letter of completion as described in this Act.

14           (b) The department shall pay the salaries of the executive  
15 secretary and that of any additional staff it determines to be  
16 necessary. The department shall provide office space and supplies  
17 for the executive secretary and other staff.

18           SECTION 8. DUTIES AND POWERS OF THE LAY MIDWIFERY BOARD AND  
19 THE TEXAS BOARD OF HEALTH. (a) Subject to the approval of the  
20 Texas Board of Health, the lay midwifery board shall:

21           (1) establish requirements for an approved lay midwifery  
22 training course;

23           (2) establish qualifications for the lay midwifery training  
24 course instructors;

25           (3) issue a lay midwifery training manual;

26           (4) establish eligibility requirements for taking the final

1 examination of a training course; and

2 (5) issue a final examination for a lay midwifery training  
3 course.

4 (b) The Texas Board of Health shall review and act on the  
5 materials submitted by the lay midwifery board for approval not  
6 later than the 60th day after the date on which they are submitted.  
7 To implement this Act, the Texas Board of Health may adopt rules,  
8 enter contracts, and prepare and publish reports on the practice of  
9 lay midwifery in this state.

10 (c) The department shall establish a procedure for reporting  
11 and processing complaints relating to lay midwifery practice in  
12 Texas.

13 SECTION 9. MANUAL. (a) The lay midwifery board shall  
14 approve a manual for the practice of lay midwifery. The department  
15 shall provide the manual to any person who requests it. An  
16 approved manual must include information about:

- 17 (1) prenatal care;
- 18 (2) normal childbirth;
- 19 (3) signs, symptoms, and emergency management of  
20 complications that occur in childbirth;
- 21 (4) screening for women who are at greater risk of  
22 childbirth complications;
- 23 (5) anatomy of the human reproduction system;
- 24 (6) sterile techniques and procedures;
- 25 (7) delivery techniques to prevent vaginal lacerations;
- 26 (8) emergency treatment of vaginal lacerations occurring

1 during childbirth;

2 (9) legal requirements and procedures for reporting births  
3 and deaths;

4 (10) resuscitation of the newborn;

5 (11) prophylactic treatment, screening, and diagnostic tests  
6 for newborns as required by law; and

7 (12) other information or procedures as determined by the  
8 department.

9 (b) The department may charge a fee not to exceed \$10 for  
10 each manual it distributes. The department shall make the manual  
11 available in English and Spanish.

12 SECTION 10. TRAINING COURSE. (a) An approved lay midwifery  
13 training course may be offered by a local health department, an  
14 accredited postsecondary educational institution, or an adult  
15 education program. The entity offering the course may charge a  
16 reasonable fee for the course.

17 (b) If the department determines that the number of approved  
18 courses offered in a region designated by the department is  
19 insufficient to satisfy the demand for training in the region, the  
20 department shall make a training course available on a temporary  
21 basis through its regional office. The department may charge a fee  
22 not to exceed \$50 for a training course it conducts. The  
23 department may waive a portion of the fee charged to an individual.

24 (c) The training course shall be taught in Spanish if that  
25 is the only language a participant of the course understands. If  
26 other course participants do not understand Spanish, the training

1 course shall be taught in English and Spanish.

2 SECTION 11. EXAMINATION. (a) A person who has completed an  
3 approved lay midwifery training course or who has comparable  
4 training approved by the lay midwifery board is entitled to take  
5 the final examination of the training course.

6 (b) An applicant for examination shall submit to the  
7 department an application fee of \$25 and a completed application on  
8 a form prescribed by the lay midwifery board.

9 (c) The department shall administer the final examination at  
10 its regional or local offices.

11 (d) The examination shall be administered in English and  
12 Spanish and may be offered in written or oral form.

13 SECTION 12. LETTER. The department shall grant a letter of  
14 completion to a person who passes the final examination.

15 SECTION 13. IDENTIFICATION REQUIREMENT. (a) In December of  
16 each year, a person who practices lay midwifery shall identify  
17 himself as a lay midwife by appearing in person before the county  
18 clerk of the county in which the person resides or before the  
19 county clerk of each county in which the person practices lay  
20 midwifery and delivering to the county clerk a verified  
21 identification form that contains:

- 22 (1) the person's name, residence, and post office address;  
23 (2) the person's date and place of birth;  
24 (3) the location of the person's practice according to  
25 counties; and  
26 (4) other information the department determines necessary



1 for the identification of lay midwives.

2 (b) The identification form shall be prescribed by the  
3 department.

4 (c) The county clerk shall provide each lay midwife who  
5 identifies himself a notice of a lay midwife's legal  
6 responsibilities under the laws and rules of this state on a form  
7 prescribed by the department. Failure to receive the notice does  
8 not constitute a defense to prosecution for acts committed in  
9 violation of the laws and rules of this state.

10 (d) The county clerk shall retain for the county clerk's  
11 records a copy of each identification form. The county clerk shall  
12 send the original identification form to the department. The  
13 county clerk may charge a reasonable fee for these services under  
14 Article 3930, Revised Statutes.

15 SECTION 14. ADDITIONAL INFORMATION. (a) The department may  
16 require information in addition to that required by Subsection (a)  
17 of Section 13 of this Act if it determines the additional  
18 information is necessary and appropriate to ascertain the nature  
19 and extent of lay midwifery in this state. The department may not  
20 require information regarding any act that is prohibited under this  
21 Act.

22 (b) Information received under this section may not be made  
23 public so as to disclose the identity of any person to whom the  
24 information relates. This information is not a public record as  
25 defined in Chapter 424, Acts of the 63rd Legislature, Regular  
26 Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

1           (c) The department shall prescribe forms for the additional  
2 information and shall distribute those forms to the county clerks  
3 of this state.

4           (d) When a person identifies himself as a lay midwife under  
5 Section 13 of this Act, the county clerk shall give a copy of any  
6 form for additional information to the person. The person shall  
7 complete the form and return it with the identification form to the  
8 county clerk.

9           (e) The county clerk shall send these forms to the  
10 department.

11           SECTION 15. ROSTER. (a) The department shall maintain a  
12 roster of all persons identified to practice lay midwifery.

13           (b) The roster shall contain for each person the information  
14 required on the identification form of this Act and other  
15 information that the department determines necessary to identify  
16 with accuracy each lay midwife who is identified under this Act.  
17 This information shall be a public record as defined in Chapter  
18 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article  
19 6252-17a, Vernon's Texas Civil Statutes).

20           SECTION 16. DUTIES OF LAY MIDWIVES; DISCLOSURE REQUIREMENT.

21           (a) Each lay midwife shall disclose in oral and written form to a  
22 prospective client the limitations of the skills and practices of a  
23 lay midwife.

24           (b) The department with the advice of the lay midwifery  
25 board shall prescribe the form of the written disclosure required  
26 by this section, which shall include the information that a lay

1 midwife:

2 (1) may assist only in normal childbirth;

3 (2) has or does not have an arrangement with a local  
4 physician for referring patients who have complications that occur  
5 before or during childbirth;

6 (3) may not administer a prescription drug without a  
7 physician's supervision, perform a Caesarean section, or perform an  
8 episiotomy; and

9 (4) has or has not passed the lay midwife training course  
10 final examination approved by the board.

11 (c) The written disclosure required by this section may not  
12 exceed 500 words and must be in English and Spanish.

13 (d) A lay midwife shall have each client sign a written  
14 disclosure form and shall send the form to the department not later  
15 than the 30th day after the date of the birth.

16 (e) A lay midwife shall encourage a client to seek prenatal  
17 care.

18 (f) A lay midwife shall encourage a client to seek medical  
19 care if the lay midwife recognizes a sign or symptom of a  
20 complication to the client's childbirth.

21 (g) Each lay midwife shall disclose to a prospective or  
22 actual client the procedure for reporting complaints with the  
23 department.

24 SECTION 17. PROHIBITED ACTS. A lay midwife may not:

25 (1) administer a prescription drug to a client except under  
26 the supervision of a licensed physician in accordance with the laws

1           (2) use forceps or surgical instruments for any procedure  
2 other than cutting the umbilical cord or providing emergency first  
3 aid during delivery;

4           (3) remove placenta by invasive techniques;

5           (4) advance or retard labor or delivery by using medicines  
6 or mechanical devices;

7           (5) use in connection with his name a title, abbreviation,  
8 or any designation tending to imply that he is a "registered" or  
9 "certified" lay midwife as opposed to one who has identified  
10 himself in compliance with this Act; or

11           (6) assist at childbirth other than a normal childbirth  
12 except in an emergency situation that poses an immediate threat to  
13 the life of the mother or newborn.

14           SECTION 18. PENALTIES. (a) A lay midwife commits an  
15 offense if the lay midwife knowingly or intentionally commits an  
16 act prohibited by this Act.

17           (b) An offense under this section is a Class C misdemeanor.

18           (c) A lay midwife who knowingly or intentionally fails to  
19 comply with the disclosure requirement of this Act commits a Class  
20 C misdemeanor.

21           (d) A lay midwife who knowingly or intentionally fails to  
22 comply with the identification requirement of this Act commits a  
23 Class C misdemeanor.

24           SECTION 19. EFFECT ON LOCAL ORDINANCES. This Act does not  
25 prohibit an incorporated city or town from adopting a local  
26 ordinance to regulate the practice of lay midwifery within its

1 corporate limits if the ordinance is at least as strict as this  
2 Act.

3 SECTION 20. FUNDS. All fees received by the department  
4 under this Act shall be deposited in the State Treasury to the  
5 credit of the General Revenue Fund and shall be appropriated to the  
6 department to defray the costs of this Act.

7 SECTION 21. REPEALER. Section 16, Chapter 41, Acts of the  
8 40th Legislature, 1st Called Session, 1927 (Rule 49a, Article 4477,  
9 Vernon's Texas Civil Statutes), is repealed.

10 SECTION 22. INITIAL APPOINTMENTS. In making the initial  
11 appointments to the lay midwifery board, the Texas Board of Health  
12 shall designate one lay midwife, one public interest  
13 representative, and the obstetrician for terms expiring January 31,  
14 1985, one lay midwife, one public interest representative, and the  
15 certified nurse-midwife for terms expiring January 31, 1987, and  
16 one lay midwife, one public interest representative, and the  
17 pediatrician for terms expiring January 31, 1989.

18 SECTION 23. REPORT. The department shall study the practice  
19 of lay midwifery in the state, including the quality of the  
20 services provided by lay midwives and the efficacy of the training  
21 program, disclosure requirements, and prohibitions established in  
22 this Act. The department shall report the results of this study to  
23 the regular session of the 71st Legislature. In the report, the  
24 department shall analyze the training program and shall recommend  
25 that the program be:

26 (1) continued as enacted;

1           (2) continued with amendments;

2           (3) made mandatory; or

3           (4) discontinued.

4           SECTION 24. EFFECTIVE DATE. (a) Except as provided by  
5 Subsection (b) of this section, this Act takes effect September 1,  
6 1983.

7           (b) Subsection (a), Section 16, and Sections 17 and 18 of  
8 this Act take effect on September 1, 1984.

9           SECTION 25. EMERGENCY. The importance of this legislation  
10 and the crowded condition of the calendars in both houses create an  
11 emergency and an imperative public necessity that the  
12 constitutional rule requiring bills to be read "on" three several  
13 days in each house be suspended, and this rule is hereby suspended.

# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE

February 7, 1983

Honorable Chet Brooks, Chairman  
Committee on Health and Human Resources  
Senate Chamber  
Austin, Texas

In Re: Senate Bill No. 238  
By: Uribe

Sir:

In response to your request for a Fiscal Note on Senate Bill No. 238 (relating to the regulation of lay midwives) this office has determined the following:

The bill would make an appropriation of certain fees and could provide the legal basis for a request for General Revenue Funds to implement the provisions of the bill.


The bill would provide for the regulation of lay midwives by the Texas Department of Health, with the assistance of an advisory board. Application, training and book fees are provided within specified limits. Such fees would be deposited in the General Revenue Fund and appropriated for the purpose of carrying out the provisions of the Act.

County clerks would be required to maintain records for the registration of lay midwives, for which they may charge fees.

The probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

<u>Fiscal Year</u>	<u>Out of the General Revenue Fund</u>	<u>Fees Deposited to the General Revenue Fund but Appropriated for Specific Use</u>	<u>Change in Number of State Employees from FY 1983</u>
1984	\$120,216	\$19,912	+ 3
1985	83,380	19,912	+ 3
1986	83,380	19,912	+ 3
1987	83,380	19,912	+ 3
1988	83,380	19,912	+ 3

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

  
Jim Oliver  
Director

Source: Department of Health;  
LBB Staff: JO, JH, GR, PA

1003 MAR 29 PM 1:51

HOUSE OF REPRESENTATIVES

# HOUSE

# COMMITTEE REPORT

1st Printing

By: Uribe

S.B. No. 238

(D. Lee, Jackson)

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of lay midwives and to a lay midwifery board appointed by the Texas Board of Health, its powers and duties; defining an offense under this Act; and providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. DEFINITIONS. In this Act:

(1) "Approved lay midwifery training course" means a training course that satisfies the requirements established by the lay midwifery board and that is approved by the Texas Board of Health.

(2) "Certified nurse-midwife" means a person who is a registered nurse under the laws of this state and who is certified by the American College of Nurse-Midwives.

(3) "Department" means the Texas Department of Health.

(4) "Lay midwife" means a person who practices lay midwifery.

(5) "Lay midwifery" means the practice of assisting childbirth for compensation.

(6) "Normal childbirth" means the delivery, at or close to term, of a pregnant woman whose physical examination reveals no abnormality or signs or symptoms of complications.

(7) "Natural childbirth trainer" means a person who counsels expectant mothers in the techniques of giving birth without artificial or mechanical assistance, but does not assist at



1 childbirth.

2           SECTION 2. EXCEPTIONS. This Act does not apply to a  
3 certified nurse-midwife, a natural childbirth trainer, a physician,  
4 a health care professional licensed by the state and operating  
5 within the scope of his license, or a person other than a lay  
6 midwife who assists childbirth in an emergency.

7           SECTION 3. LAY MIDWIFERY BOARD. The Texas Board of Health  
8 shall appoint a lay midwifery board composed of:

9           (1) three lay midwives with at least three years of  
10 experience in the practice of lay midwifery, no more than one of  
11 whom may be a licensed health care professional;

12           (2) one certified nurse-midwife;

13           (3) a person licensed to practice medicine who is certified  
14 by the American College of Obstetricians and Gynecologists;

15           (4) one person licensed to practice medicine who is  
16 certified by the American Board of Pediatricians; and

17           (5) three persons who are not practicing or trained in a  
18 health care profession and who represent the public interest.

19           SECTION 4. TERMS. The members of the lay midwifery board  
20 hold office for staggered terms of six years, with the terms of  
21 three members expiring on January 31 of each odd-numbered year.

22           SECTION 5. OFFICERS; QUORUM; MEETINGS. (a) The lay  
23 midwifery board shall elect a chairman from one of the public  
24 interest members and a vice-chairman from any of the other members.

25           (b) A majority of the members of the lay midwifery board  
26 constitutes a quorum.

1           (c) The lay midwifery board shall meet at least once during  
2 the first year of its existence and at other times at the call of  
3 the Texas Board of Health.

4           SECTION 6. EXPENSES. Members may not receive compensation  
5 for service on the lay midwifery board. Each member is entitled to  
6 receive \$50 for each meeting that the member attends and the per  
7 diem and travel allowance authorized for state employees.

8           SECTION 7. EXECUTIVE SECRETARY; STAFF. (a) The department  
9 shall hire an executive secretary after consultation with the lay  
10 midwifery board to perform administrative duties, including keeping  
11 the minutes of lay midwifery board meetings, maintaining records  
12 about approved training courses, and maintaining records of persons  
13 who have received a letter of completion as described in this Act.

14           (b) The department shall pay the salaries of the executive  
15 secretary and that of any additional staff it determines to be  
16 necessary. The department shall provide office space and supplies  
17 for the executive secretary and other staff.

18           SECTION 8. DUTIES AND POWERS OF THE LAY MIDWIFERY BOARD AND  
19 THE TEXAS BOARD OF HEALTH. (a) Subject to the approval of the  
20 Texas Board of Health, the lay midwifery board shall:

21           (1) establish requirements for an approved lay midwifery  
22 training course;

23           (2) establish qualifications for the lay midwifery training  
24 course instructors;

25           (3) issue a lay midwifery training manual;

26           (4) establish eligibility requirements for taking the final

1 examination of a training course; and

2 (5) issue a final examination for a lay midwifery training  
3 course.

4 (b) The Texas Board of Health shall review and act on the  
5 materials submitted by the lay midwifery board for approval not  
6 later than the 60th day after the date on which they are submitted.  
7 To implement this Act, the Texas Board of Health may adopt rules,  
8 enter contracts, and prepare and publish reports on the practice of  
9 lay midwifery in this state.

10 (c) The department shall establish a procedure for reporting  
11 and processing complaints relating to lay midwifery practice in  
12 Texas.

13 SECTION 9. MANUAL. (a) The lay midwifery board shall  
14 approve a manual for the practice of lay midwifery. The department  
15 shall provide the manual to any person who requests it. An  
16 approved manual must include information about:

- 17 (1) prenatal care;
- 18 (2) normal childbirth;
- 19 (3) signs, symptoms, and emergency management of  
20 complications that occur in childbirth;
- 21 (4) screening for women who are at greater risk of  
22 childbirth complications;
- 23 (5) anatomy of the human reproduction system;
- 24 (6) sterile techniques and procedures;
- 25 (7) delivery techniques to prevent vaginal lacerations;
- 26 (8) emergency treatment of vaginal lacerations occurring

1 during childbirth;

2 (9) legal requirements and procedures for reporting births  
3 and deaths;

4 (10) resuscitation of the newborn;

5 (11) prophylactic treatment, screening, and diagnostic tests  
6 for newborns as required by law; and

7 (12) other information or procedures as determined by the  
8 department.

9 (b) The department may charge a fee not to exceed \$10 for  
10 each manual it distributes. The department shall make the manual  
11 available in English and Spanish.

12 SECTION 10. TRAINING COURSE. (a) An approved lay midwifery  
13 training course may be offered by a local health department, an  
14 accredited postsecondary educational institution, or an adult  
15 education program. The entity offering the course may charge a  
16 reasonable fee for the course.

17 (b) If the department determines that the number of approved  
18 courses offered in a region designated by the department is  
19 insufficient to satisfy the demand for training in the region, the  
20 department shall make a training course available on a temporary  
21 basis through its regional office. The department may charge a fee  
22 not to exceed \$50 for a training course it conducts. The  
23 department may waive a portion of the fee charged to an individual.

24 (c) The training course shall be taught in Spanish if that  
25 is the only language a participant of the course understands. If  
26 other course participants do not understand Spanish, the training

1 course shall be taught in English and Spanish.

2 SECTION 11. EXAMINATION. (a) A person who has completed an  
3 approved lay midwifery training course or who has comparable  
4 training approved by the lay midwifery board is entitled to take  
5 the final examination of the training course.

6 (b) An applicant for examination shall submit to the  
7 department an application fee of \$25 and a completed application on  
8 a form prescribed by the lay midwifery board.

9 (c) The department shall administer the final examination at  
10 its regional or local offices.

11 (d) The examination shall be administered in English and  
12 Spanish and may be offered in written or oral form.

13 SECTION 12. LETTER. The department shall grant a letter of  
14 completion to a person who passes the final examination.

15 SECTION 13. IDENTIFICATION REQUIREMENT. (a) In December of  
16 each year, a person who practices lay midwifery shall identify  
17 himself as a lay midwife by appearing in person before the county  
18 clerk of the county in which the person resides or before the  
19 county clerk of each county in which the person practices lay  
20 midwifery and delivering to the county clerk a verified  
21 identification form that contains:

- 22 (1) the person's name, residence, and post office address;  
23 (2) the person's date and place of birth;  
24 (3) the location of the person's practice according to  
25 counties; and  
26 (4) other information the department determines necessary

1 for the identification of lay midwives.

2 (b) The identification form shall be prescribed by the  
3 department.

4 (c) The county clerk shall provide each lay midwife who  
5 identifies himself a notice of a lay midwife's legal  
6 responsibilities under the laws and rules of this state on a form  
7 prescribed by the department. Failure to receive the notice does  
8 not constitute a defense to prosecution for acts committed in  
9 violation of the laws and rules of this state.

10 (d) The county clerk shall retain for the county clerk's  
11 records a copy of each identification form. The county clerk shall  
12 send the original identification form to the department. The  
13 county clerk may charge a reasonable fee for these services under  
14 Article 3930, Revised Statutes.

15 SECTION 14. ADDITIONAL INFORMATION. (a) The department may  
16 require information in addition to that required by Subsection (a)  
17 of Section 13 of this Act if it determines the additional  
18 information is necessary and appropriate to ascertain the nature  
19 and extent of lay midwifery in this state. The department may not  
20 require information regarding any act that is prohibited under this  
21 Act.

22 (b) Information received under this section may not be made  
23 public so as to disclose the identity of any person to whom the  
24 information relates. This information is not a public record as  
25 defined in Chapter 424, Acts of the 63rd Legislature, Regular  
26 Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

1           (c) The department shall prescribe forms for the additional  
2 information and shall distribute those forms to the county clerks  
3 of this state.

4           (d) When a person identifies himself as a lay midwife under  
5 Section 13 of this Act, the county clerk shall give a copy of any  
6 form for additional information to the person. The person shall  
7 complete the form and return it with the identification form to the  
8 county clerk.

9           (e) The county clerk shall send these forms to the  
10 department.

11           SECTION 15. ROSTER. (a) The department shall maintain a  
12 roster of all persons identified to practice lay midwifery.

13           (b) The roster shall contain for each person the information  
14 required on the identification form of this Act and other  
15 information that the department determines necessary to identify  
16 with accuracy each lay midwife who is identified under this Act.  
17 This information shall be a public record as defined in Chapter  
18 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article  
19 6252-17a, Vernon's Texas Civil Statutes).

20           SECTION 16. DUTIES OF LAY MIDWIVES; DISCLOSURE REQUIREMENT.

21           (a) Each lay midwife shall disclose in oral and written form to a  
22 prospective client the limitations of the skills and practices of a  
23 lay midwife.

24           (b) The department with the advice of the lay midwifery  
25 board shall prescribe the form of the written disclosure required  
26 by this section, which shall include the information that a lay

1 midwife:

2 (1) may assist only in normal childbirth;

3 (2) has or does not have an arrangement with a local  
4 physician for referring patients who have complications that occur  
5 before or during childbirth;

6 (3) may not administer a prescription drug without a  
7 physician's supervision, perform a Caesarean section, or perform an  
8 episiotomy; and

9 (4) has or has not passed the lay midwife training course  
10 final examination approved by the board.

11 (c) The written disclosure required by this section may not  
12 exceed 500 words and must be in English and Spanish.

13 (d) A lay midwife shall have each client sign a written  
14 disclosure form and shall send the form to the department not later  
15 than the 30th day after the date of the birth.

16 (e) A lay midwife shall encourage a client to seek prenatal  
17 care.

18 (f) A lay midwife shall encourage a client to seek medical  
19 care if the lay midwife recognizes a sign or symptom of a  
20 complication to the client's childbirth.

21 (g) Each lay midwife shall disclose to a prospective or  
22 actual client the procedure for reporting complaints with the  
23 department.

24 SECTION 17. PROHIBITED ACTS. A lay midwife may not:

25 (1) administer a prescription drug to a client except under  
26 the supervision of a licensed physician in accordance with the laws



1           (2) use forceps or surgical instruments for any procedure  
2 other than cutting the umbilical cord or providing emergency first  
3 aid during delivery;

4           (3) remove placenta by invasive techniques;

5           (4) advance or retard labor or delivery by using medicines  
6 or mechanical devices;

7           (5) use in connection with his name a title, abbreviation,  
8 or any designation tending to imply that he is a "registered" or  
9 "certified" lay midwife as opposed to one who has identified  
10 himself in compliance with this Act; or

11          (6) assist at childbirth other than a normal childbirth  
12 except in an emergency situation that poses an immediate threat to  
13 the life of the mother or newborn.

14          SECTION 18. PENALTIES. (a) A lay midwife commits an  
15 offense if the lay midwife knowingly or intentionally commits an  
16 act prohibited by this Act.

17          (b) An offense under this section is a Class C misdemeanor.

18          (c) A lay midwife who knowingly or intentionally fails to  
19 comply with the disclosure requirement of this Act commits a Class  
20 C misdemeanor.

21          (d) A lay midwife who knowingly or intentionally fails to  
22 comply with the identification requirement of this Act commits a  
23 Class C misdemeanor.

24          SECTION 19. EFFECT ON LOCAL ORDINANCES. This Act does not  
25 prohibit an incorporated city or town from adopting a local  
26 ordinance to regulate the practice of lay midwifery within its

1 corporate limits if the ordinance is at least as strict as this  
2 Act.

3 SECTION 20. FUNDS. All fees received by the department  
4 under this Act shall be deposited in the State Treasury to the  
5 credit of the General Revenue Fund and shall be appropriated to the  
6 department to defray the costs of this Act.

7 SECTION 21. REPEALER. Section 16, Chapter 41, Acts of the  
8 40th Legislature, 1st Called Session, 1927 (Rule 49a, Article 4477,  
9 Vernon's Texas Civil Statutes), is repealed.

10 SECTION 22. INITIAL APPOINTMENTS. In making the initial  
11 appointments to the lay midwifery board, the Texas Board of Health  
12 shall designate one lay midwife, one public interest  
13 representative, and the obstetrician for terms expiring January 31,  
14 1985, one lay midwife, one public interest representative, and the  
15 certified nurse-midwife for terms expiring January 31, 1987, and  
16 one lay midwife, one public interest representative, and the  
17 pediatrician for terms expiring January 31, 1989.

18 SECTION 23. REPORT. The department shall study the practice  
19 of lay midwifery in the state, including the quality of the  
20 services provided by lay midwives and the efficacy of the training  
21 program, disclosure requirements, and prohibitions established in  
22 this Act. The department shall report the results of this study to  
23 the regular session of the 71st Legislature. In the report, the  
24 department shall analyze the training program and shall recommend  
25 that the program be:

26 (1) continued as enacted;

1           (2) continued with amendments;

2           (3) made mandatory; or

3           (4) discontinued.

4           SECTION 24. EFFECTIVE DATE. (a) Except as provided by  
5 Subsection (b) of this section, this Act takes effect September 1,  
6 1983.

7           (b) Subsection (a), Section 16, and Sections 17 and 18 of  
8 this Act take effect on September 1, 1984.

9           SECTION 25. EMERGENCY. The importance of this legislation  
10 and the crowded condition of the calendars in both houses create an  
11 emergency and an imperative public necessity that the  
12 constitutional rule requiring bills to be read on three several  
13 days in each house be suspended, and this rule is hereby suspended.

# COMMITTEE REPORT

3-28-83

(date)

The Honorable Gib Lewis  
Speaker of the House of Representatives

Sir:

We, your COMMITTEE ON PUBLIC HEALTH, to whom was referred SB 238 have had the same under consideration and beg to report back with the recommendation that it (measure)

- (X) do pass, without amendment.  
( ) do pass, with amendment(s).  
( ) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. (X) yes ( ) no

An author's fiscal statement was requested. ( ) yes (X) no

An actuarial analysis was requested. ( ) yes (X) no

The Committee recommends that this measure be placed on the (Local) or (Consent) Calendar.

This measure (X) proposes new law.  
( ) amends existing law.

House Sponsor of Senate Measure Don Lee, Lee Jackson

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Wright, Ch.	X			
Lee, D., V.C.	X			
Madia, C.B.O.	X			
Barrientos	X			
DeLay	X			
Eikenburg	X			
Oliver	X			
Schoolcraft	X			
Wilson				X

Total  
8 aye  
0 nay  
0 present, not voting  
1 absent

Brod Wright  
CHAIRMAN  
Nicholas  
COMMITTEE COORDINATOR

## BILL ANALYSIS

Senate Bill 238

Committee on Public Health

Hector Uribe -- Don Lee, Lee Jackson House sponsors

### Background Information:

According to the Texas Department of Health, the number of deliveries attended by lay midwives in Texas is steadily increasing and further regulation of lay midwives is needed in order to promote the safer practice of lay midwifery throughout the state.

Lay midwives are persons who receive compensation for assisting in childbirth. Currently in Texas there is great diversity in the degree of knowledge and skill levels possessed by lay midwives; some may have received specialized training, while others may merely be self-taught.

Although a few statutes refer to lay midwifery, no single law comprehensively defines the duties, responsibilities, or limitations of the practice of lay midwifery in Texas. Current statutes require lay midwives to register with county registrars and to perform such activities as placing prophylactic drops in newborn infants' eyes, reporting any inflammations in newborn infants' eyes, filing birth and death certificates, and testing for syphilis.

In Banti v. State the Texas Court of Criminal Appeals held that a lay midwife was not practicing medicine when assisting with a normal childbirth. A more recent Attorney General's opinion held that lay midwives may provide services which are incidental to normal childbirth. These rulings have created some confusion about the legality and scope of the practice of lay midwifery in Texas.

### What the Bill Proposes to Do:

Establishes a lay midwifery board and specifies board composition, terms of office, activities, duties and terms of initial appointment; directs the Department of Health to provide staff salaries, office space, and supplies; enables Department to adopt rules and enter contract on the practice of lay midwifery; calls for and delineates the provision of lay midwifery manual, training course, and examination; requires formal identification of lay midwives, including public roster; requires lay midwife to complete disclosure form provided by the department and to encourage appropriate prenatal and medical care; specifies prohibited lay midwife activities; establishes penalty for violation of Act; allows local ordinances on lay midwifery; specifies deposit and reappropriation of collected fees; repeals existing legislation; directs department to study and make a report to the 71st Legislature on the practice of lay midwifery. This bill proposes new law.

### Section By Section Analysis:

Section 1 -- Definitions.

Section 2 -- Exemptions. Lists persons who are exempt from this Act.

Section 3 -- Lay Midwifery Board. Calls for the Texas Board of Health to appoint a lay midwifery board and specifies board composition.

Section 4 -- Terms. Specifies terms of office for board members.

Section 5 -- Officers: Quorum, meetings. Directs board to elect chairman and vice-chairman; defines quorum; specifies board's meeting times.

Section 6 -- Expenses. Stipulates that board members may not receive compensation for service, but may receive \$50.00 per meeting attended, per diem, and travel allowance.

Section 7 -- Executive Secretary: Staff. Directs the Department of Health to hire an executive secretary and specifies duties to be performed, directs the department to pay staff salaries and provide office space and supplies.

Section 8 -- Duties and Powers of the Lay Midwifery Board and the Texas Board of Health. Specifies the duties of the lay midwifery board and subjects such duties to the approval of the Texas Board of Health; directs the Texas Board of Health to review and act within sixty days on materials submitted by the lay midwifery board; enables Board of Health to adopt rules, enter contracts, and prepare and publish reports on the practice of lay midwifery.

Section 9 -- Manual. Directs the lay midwifery board to approve a manual for the practice of lay midwifery; calls for the department to provide the manual to the public; specifies information to be included in the manual; enables the department to charge maximum of \$10.00 for each manual; calls for manual to be available in both English and Spanish.

Section 10 -- Training Course. Enables provision of an approved lay midwifery training course by local health department, accredited postsecondary educational institution, or an adult education program; allows reasonable fee to be charged for course; directs department to provide training course on temporary basis if it determines there exists an insufficient number of approved courses in a specific region; allows fee for course to be charged and partially waived; provides for course to be conducted in Spanish as appropriate.

Section 11 -- Examination. Entitles person completing approved lay midwifery training course or comparable training to take training course final examination; specifies requirements for examination application; directs department to administer final examination; calls for examination to be administered in Spanish and English; allow examination to be offered in written or oral form.

Section 12 -- Letter. Directs the department to grant letter of completion to persons passing final examination.

Section 13 -- Identification Requirement. Requires lay midwives to identify themselves personally as such before a county clerk; specifies contents of identification form; directs department to provide identification form; specifies county clerk's duties in providing midwives with notice of legal responsibilities and handling identification forms.

Section 14 -- Additional Information. Enables department to obtain information as needed, unless regards any act prohibited under this Act; prohibits public disclosure of information obtained; directs department to prescribe and distribute forms; specifies county clerk's responsibilities in handling of forms.

Section 15 -- Roster. Directs department to maintain roster of lay midwives; specifies content of roster; defines information obtained as public record.

Section 16 -- Duties of Lay Midwives: Disclosure Requirement. Directs midwife to disclose to prospective clients limitations of skills and practice; requires department to provide disclosure form and specifies form's content; delineates lay midwife's responsibilities regarding disclosure form; directs lay midwife to encourage client to seek prenatal and needed medical care.

Section 17 -- Prohibited Acts. Lists activities which may not be performed by a lay midwife.

Section 18 -- Penalties. Deems that the penalty for violating this Act is a Class C misdemeanor.

Section 19 -- Effect on Local Ordinances. Allows incorporated city or town to adopt local ordinance pertaining to lay midwifery which is at least as strict as this Act.

Section 20 -- Funds. Requires collected fees to be deposited in state treasury and reappropriated to the department to defray costs of this Act.

Section 21 -- Repealer. Repeals Rule 49a, Article 4477, V.T.C.S.

Section 22 -- Initial Appointments. Delineates terms of initial appointment to lay midwifery board.

Section 23 -- Report. Directs the department to study the practice of lay midwifery in Texas and to report results of study of 71st Legislature; specifies focus of study and report.

Section 24 -- Effective Date. Cites effective date of Sections 16(a), 17, and 18 of this Act of September 1, 1984, and remaining sections of Act as September 1, 1983.

Section 25 -- Emergency clause.

Rulemaking Authority:

It is the committee's opinion that rulemaking authority is delegated to the Texas Board of Health in Section 8 of this Act.

Summary of Committee Action:

The Committee heard public testimony on this bill on March 28, 1983, and voted to send the bill to Calendars by a vote of 8 ayes, 0 nays, 0 pnv's, with one member absent.

# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE

March 14, 1983

Honorable Brad Wright, Chair  
Committee on Public Health  
House of Representatives  
Austin, Texas

In Re: Senate Bill No. 238,  
as engrossed  
By: Uribe

Sir:

In response to your request for a Fiscal Note on Senate Bill No. 238, as engrossed (relating to the regulation of lay midwives), this office has determined the following:

The bill would make an appropriation of certain fees and could provide the legal basis for a request for General Revenue Funds to implement the provisions of the bill.

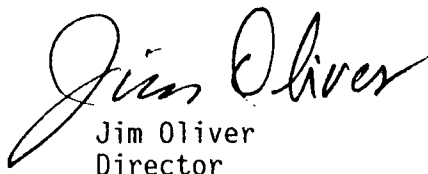
The bill would provide for the regulation of lay midwives by the Texas Department of Health, with the assistance of an advisory board. Application, training and book fees are provided within specified limits. Such fees would be deposited in the General Revenue Fund and appropriated for the purpose of carrying out the provisions of the Act.

County clerks would be required to maintain records for the registration of lay midwives, for which they may charge fees.

The probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

<u>Fiscal Year</u>	<u>Out of the General Revenue Fund</u>	<u>Fees Deposited to the General Revenue Fund but Appropriated for Specific Use</u>	<u>Change in Number of State Employees from FY 1983</u>
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Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

  
Jim Oliver  
Director

Source: Department of Health;  
LBB Staff: JO, JH, GR, LV



# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE

February 7, 1983

Honorable Chet Brooks, Chairman  
Committee on Health and Human Resources  
Senate Chamber  
Austin, Texas

In Re: Senate Bill No. 238  
By: Uribe

Sir:

In response to your request for a Fiscal Note on Senate Bill No. 238 (relating to the regulation of lay midwives) this office has determined the following:

The bill would make an appropriation of certain fees and could provide the legal basis for a request for General Revenue Funds to implement the provisions of the bill.


The bill would provide for the regulation of lay midwives by the Texas Department of Health, with the assistance of an advisory board. Application, training and book fees are provided within specified limits. Such fees would be deposited in the General Revenue Fund and appropriated for the purpose of carrying out the provisions of the Act.

County clerks would be required to maintain records for the registration of lay midwives, for which they may charge fees.

The probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

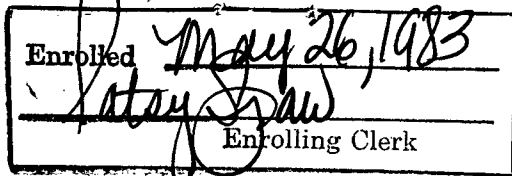
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1986	83,380	19,912	+ 3
1987	83,380	19,912	+ 3
1988	83,380	19,912	+ 3

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

  
Jim Oliver  
Director

Source: Department of Health;  
LBB Staff: JO, JH, GR, PA

and to the appropriation  
of fees <sup>required under the act</sup> for use by the  
Department in administering  
the Act



S.B. No. 238

1 AN ACT

2 relating to the regulation of lay midwives, to a lay midwifery  
3 board appointed by the Texas Board of Health, its powers and  
4 duties; defining an offense under this Act, and to the  
5 appropriation of fees received under the Act for use by the  
6 department in administering the Act; and providing penalties.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. DEFINITIONS. In this Act:

9 (1) "Approved lay midwifery training course" means a  
10 training course that satisfies the requirements established by the  
11 lay midwifery board and that is approved by the Texas Board of  
12 Health.

13 (2) "Certified nurse-midwife" means a person who is a  
14 registered nurse under the laws of this state and who is certified  
15 by the American College of Nurse-Midwives.

16 (3) "Department" means the Texas Department of Health.

17 (4) "Lay midwife" means a person who practices lay  
18 midwifery.

19 (5) "Lay midwifery" means the practice of assisting  
20 childbirth for compensation.

21 (6) "Normal childbirth" means the delivery, at or close to  
22 term, of a pregnant woman whose physical examination reveals no  
23 abnormality or signs or symptoms of complications.

24 (7) "Natural childbirth trainer" means a person who counsels  
25 expectant mothers in the techniques of giving birth without

S.B. No. 238

1 artificial or mechanical assistance, but does not assist at  
2 childbirth.

3 SECTION 2. EXCEPTIONS. This Act does not apply to a  
4 certified nurse-midwife, a natural childbirth trainer, a physician,  
5 a health care professional licensed by the state and operating  
6 within the scope of his license, or a person other than a lay  
7 midwife who assists childbirth in an emergency.

8 SECTION 3. LAY MIDWIFERY BOARD. The Texas Board of Health  
9 shall appoint a lay midwifery board composed of:

10 (1) three lay midwives with at least three years of  
11 experience in the practice of lay midwifery, no more than one of  
12 whom may be a licensed health care professional;

13 (2) one certified nurse-midwife;

14 (3) a person licensed to practice medicine who is certified  
15 by the American College of Obstetricians and Gynecologists;

16 (4) one person licensed to practice medicine who is  
17 certified by the American Board of Pediatricians; and

18 (5) three persons who are not practicing or trained in a  
19 health care profession and who represent the public interest.

20 SECTION 4. TERMS. The members of the lay midwifery board  
21 hold office for staggered terms of six years, with the terms of  
22 three members expiring on January 31 of each odd-numbered year.

23 SECTION 5. OFFICERS; QUORUM; MEETINGS. (a) The lay  
24 midwifery board shall elect a chairman from one of the public  
25 interest members and a vice-chairman from any of the other members.

26 (b) A majority of the members of the lay midwifery board

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1 constitutes a quorum.

2 (c) The lay midwifery board shall meet at least once during  
3 the first year of its existence and at other times at the call of  
4 the Texas Board of Health.

5 SECTION 6. EXPENSES. Members may not receive compensation  
6 for service on the lay midwifery board. Each member is entitled to  
7 receive \$50 for each meeting that the member attends and the per  
8 diem and travel allowance authorized for state employees.

9 SECTION 7. EXECUTIVE SECRETARY; STAFF. (a) The department  
10 shall hire an executive secretary after consultation with the lay  
11 midwifery board to perform administrative duties, including keeping  
12 the minutes of lay midwifery board meetings, maintaining records  
13 about approved training courses, and maintaining records of persons  
14 who have received a letter of completion as described in this Act.

15 (b) The department shall pay the salaries of the executive  
16 secretary and that of any additional staff it determines to be  
17 necessary. The department shall provide office space and supplies  
18 for the executive secretary and other staff.

19 SECTION 8. DUTIES AND POWERS OF THE LAY MIDWIFERY BOARD AND  
20 THE TEXAS BOARD OF HEALTH. (a) Subject to the approval of the  
21 Texas Board of Health, the lay midwifery board shall:

22 (1) establish requirements for an approved lay midwifery  
23 training course;

24 (2) establish qualifications for the lay midwifery training  
25 course instructors;

26 (3) issue a lay midwifery training manual;

(4) establish eligibility requirements for taking the final examination of a training course; and

(5) issue a final examination for a lay midwifery training course.

(b) The Texas Board of Health shall review and act on the materials submitted by the lay midwifery board for approval not later than the 60th day after the date on which they are submitted. To implement this Act, the Texas Board of Health may adopt rules, enter contracts, and prepare and publish reports on the practice of lay midwifery in this state.

(c) The department shall establish a procedure for reporting and processing complaints relating to lay midwifery practice in Texas.

SECTION 9. MANUAL. (a) The lay midwifery board shall approve a manual for the practice of lay midwifery. The department shall provide the manual to any person who requests it. An approved manual must include information about:

(1) prenatal care;

(2) normal childbirth;

(3) signs, symptoms, and emergency management of complications that occur in childbirth;

(4) screening for women who are at greater risk of childbirth complications;

(5) anatomy of the human reproduction system;

(6) sterile techniques and procedures;

(7) delivery techniques to prevent vaginal lacerations;

1           (8) emergency treatment of vaginal lacerations occurring  
2 during childbirth;

3           (9) legal requirements and procedures for reporting births  
4 and deaths;

5           (10) resuscitation of the newborn;

6           (11) prophylactic treatment, screening, and diagnostic tests  
7 for newborns as required by law; and

8           (12) other information or procedures as determined by the  
9 department.

10          (b) The department may charge a fee not to exceed \$10 for  
11 each manual it distributes. The department shall make the manual  
12 available in English and Spanish.

13          SECTION 10. TRAINING COURSE. (a) An approved lay midwifery  
14 training course may be offered by a local health department, an  
15 accredited postsecondary educational institution, or an adult  
16 education program. The entity offering the course may charge a  
17 reasonable fee for the course.

18          (b) If the department determines that the number of approved  
19 courses offered in a region designated by the department is  
20 insufficient to satisfy the demand for training in the region, the  
21 department shall make a training course available on a temporary  
22 basis through its regional office. The department may charge a fee  
23 not to exceed \$50 for a training course it conducts. The  
24 department may waive a portion of the fee charged to an individual.

25          (c) The training course shall be taught in Spanish if that  
26 is the only language a participant of the course understands. If

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1 other course participants do not understand Spanish, the training  
2 course shall be taught in English and Spanish.

3 SECTION 11. EXAMINATION. (a) A person who has completed an  
4 approved lay midwifery training course or who has comparable  
5 training approved by the lay midwifery board is entitled to take  
6 the final examination of the training course.

7 (b) An applicant for examination shall submit to the  
8 department an application fee of \$25 and a completed application on  
9 a form prescribed by the lay midwifery board.

10 (c) The department shall administer the final examination at  
11 its regional or local offices.

12 (d) The examination shall be administered in English and  
13 Spanish and may be offered in written or oral form.

14 SECTION 12. LETTER. The department shall grant a letter of  
15 completion to a person who passes the final examination.

16 SECTION 13. IDENTIFICATION REQUIREMENT. (a) In December of  
17 each year, a person who practices lay midwifery shall identify  
18 himself as a lay midwife by appearing in person before the county  
19 clerk of the county in which the person resides or before the  
20 county clerk of each county in which the person practices lay  
21 midwifery and delivering to the county clerk a verified  
22 identification form that contains:

- 23 (1) the person's name, residence, and post office address;  
24 (2) the person's date and place of birth;  
25 (3) the location of the person's practice according to  
26 counties; and



1           (4) other information the department determines necessary  
2 for the identification of lay midwives.

3           (b) The identification form shall be prescribed by the  
4 department.

5           (c) The county clerk shall provide each lay midwife who  
6 identifies himself a notice of a lay midwife's legal  
7 responsibilities under the laws and rules of this state on a form  
8 prescribed by the department. Failure to receive the notice does  
9 not constitute a defense to prosecution for acts committed in  
10 violation of the laws and rules of this state.

11           (d) The county clerk shall retain for the county clerk's  
12 records a copy of each identification form. The county clerk shall  
13 send the original identification form to the department. The  
14 county clerk may charge a reasonable fee for these services under  
15 Article 3930, Revised Statutes.

16           SECTION 14. ADDITIONAL INFORMATION. (a) The department may  
17 require information in addition to that required by Subsection (a)  
18 of Section 13 of this Act if it determines the additional  
19 information is necessary and appropriate to ascertain the nature  
20 and extent of lay midwifery in this state. The department may not  
21 require information regarding any act that is prohibited under this  
22 Act.

23           (b) Information received under this section may not be made  
24 public so as to disclose the identity of any person to whom the  
25 information relates. This information is not a public record as  
26 defined in Chapter 424, Acts of the 63rd Legislature, Regular

1 Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

2 (c) The department shall prescribe forms for the additional  
3 information and shall distribute those forms to the county clerks  
4 of this state.

5 (d) When a person identifies himself as a lay midwife under  
6 Section 13 of this Act, the county clerk shall give a copy of any  
7 form for additional information to the person. The person shall  
8 complete the form and return it with the identification form to the  
9 county clerk.

10 (e) The county clerk shall send these forms to the  
11 department.

12 SECTION 15. ROSTER. (a) The department shall maintain a  
13 roster of all persons identified to practice lay midwifery.

14 (b) The roster shall contain for each person the information  
15 required on the identification form of this Act and other  
16 information that the department determines necessary to identify  
17 with accuracy each lay midwife who is identified under this Act.  
18 This information shall be a public record as defined in Chapter  
19 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article  
20 6252-17a, Vernon's Texas Civil Statutes).

21 SECTION 16. DUTIES OF LAY MIDWIVES; DISCLOSURE REQUIREMENT.

22 (a) Each lay midwife shall disclose in oral and written form to a  
23 prospective client the limitations of the skills and practices of a  
24 lay midwife.

25 (b) The department with the advice of the lay midwifery  
26 board shall prescribe the form of the written disclosure required

by this section, which shall include the information that a lay midwife:

(1) may assist only in normal childbirth;

(2) has or does not have an arrangement with a local physician for referring patients who have complications that occur before or during childbirth;

(3) may not administer a prescription drug without a physician's supervision, perform a Caesarean section, or perform an episiotomy; and

(4) has or has not passed the lay midwife training course final examination approved by the board.

(c) The written disclosure required by this section may not exceed 500 words and must be in English and Spanish.

(d) A lay midwife shall have each client sign a written disclosure form and shall send the form to the department not later than the 30th day after the date of the birth.

(e) A lay midwife shall encourage a client to seek prenatal care.

(f) A lay midwife shall encourage a client to seek medical care if the lay midwife recognizes a sign or symptom of a complication to the client's childbirth.

(g) Each lay midwife shall disclose to a prospective or actual client the procedure for reporting complaints with the department.

SECTION 17. PROHIBITED ACTS. A lay midwife may not:

(1) administer a prescription drug to a client except under

1 the supervision of a licensed physician in accordance with the laws  
2 of this state;

3 (2) use forceps or surgical instruments for any procedure  
4 other than cutting the umbilical cord or providing emergency first  
5 aid during delivery;

6 (3) remove placenta by invasive techniques;

7 (4) advance or retard labor or delivery by using medicines  
8 or mechanical devices;

9 (5) use in connection with his name a title, abbreviation,  
10 or any designation tending to imply that he is a "registered" or  
11 "certified" lay midwife as opposed to one who has identified  
12 himself in compliance with this Act; or

13 (6) assist at childbirth other than a normal childbirth  
14 except in an emergency situation that poses an immediate threat to  
15 the life of the mother or newborn.

16 SECTION 18. PENALTIES. (a) A lay midwife commits an  
17 offense if the lay midwife knowingly or intentionally commits an  
18 act prohibited by this Act.

19 (b) An offense under this section is a Class C misdemeanor.

20 (c) A lay midwife who knowingly or intentionally fails to  
21 comply with the disclosure requirement of this Act commits a Class  
22 C misdemeanor.

23 (d) A lay midwife who knowingly or intentionally fails to  
24 comply with the identification requirement of this Act commits a  
25 Class C misdemeanor.

26 SECTION 19. EFFECT ON LOCAL ORDINANCES. This Act does not

1 prohibit an incorporated city or town from adopting a local  
2 ordinance to regulate the practice of lay midwifery within its  
3 corporate limits if the ordinance is at least as strict as this  
4 Act.

5 SECTION 20. FUNDS. All fees received by the department  
6 under this Act shall be deposited in the State Treasury to the  
7 credit of the General Revenue Fund and shall be appropriated to the  
8 department to defray the costs of this Act.

9 SECTION 21. REPEALER. Section 16, Chapter 41, Acts of the  
10 40th Legislature, 1st Called Session, 1927 (Rule 49a, Article 4477,  
11 Vernon's Texas Civil Statutes), is repealed.

12 SECTION 22. INITIAL APPOINTMENTS. In making the initial  
13 appointments to the lay midwifery board, the Texas Board of Health  
14 shall designate one lay midwife, one public interest  
15 representative, and the obstetrician for terms expiring January 31,  
16 1985, one lay midwife, one public interest representative, and the  
17 certified nurse-midwife for terms expiring January 31, 1987, and  
18 one lay midwife, one public interest representative, and the  
19 pediatrician for terms expiring January 31, 1989.

20 SECTION 23. REPORT. The department shall study the practice  
21 of lay midwifery in the state, including the quality of the  
22 services provided by lay midwives and the efficacy of the training  
23 program, disclosure requirements, and prohibitions established in  
24 this Act. The department shall report the results of this study to  
25 the regular session of the 71st Legislature. In the report, the  
26 department shall analyze the training program and shall recommend

3-11-84  
15  
50

S.B. No. 238

1 that the program be:

- 2 (1) continued as enacted;  
3 (2) continued with amendments;  
4 (3) made mandatory; or  
5 (4) discontinued.

6 SECTION 24. EFFECTIVE DATE. (a) Except as provided by  
7 Subsection (b) of this section, this Act takes effect September 1,  
8 1983.

9 (b) Subsection (a), Section 16, and Sections 17 and 18 of  
10 this Act take effect on September 1, 1984.

11 SECTION 25. EMERGENCY. The importance of this legislation  
12 and the crowded condition of the calendars in both houses create an  
13 emergency and an imperative public necessity that the  
14 constitutional rule requiring bills to be read on three several  
15 days in each house be suspended, and this rule is hereby suspended.

4-12-83  
KA  
cc

S.B. No. 238

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 238 passed the Senate on February 17, 1983, by a viva-voce vote.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 238 passed the House on May 25, 1983, by a non-record vote.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE

March 14, 1983

Honorable Brad Wright, Chair  
Committee on Public Health  
House of Representatives  
Austin, Texas

In Re: Senate Bill No. 238,  
as engrossed  
By: Uribe

Sir:

In response to your request for a Fiscal Note on Senate Bill No. 238, as engrossed (relating to the regulation of lay midwives), this office has determined the following:

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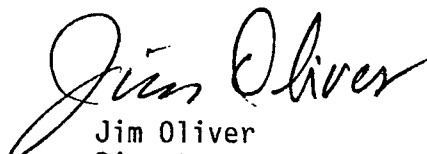
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County clerks would be required to maintain records for the registration of lay midwives, for which they may charge fees.

The probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

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1985	66,863	19,912	+ 2
1986	66,863	19,912	+ 2
1987	66,863	19,912	+ 2
1988	66,863	19,912	+ 2

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

  
Jim Oliver  
Director

Source: Department of Health;  
LBB Staff: JO, JH, GR, LV



# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE

February 7, 1983

Honorable Chet Brooks, Chairman  
Committee on Health and Human Resources  
Senate Chamber  
Austin, Texas

In Re: Senate Bill No. 238  
By: Uribe

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Jim Oliver  
Director

Source: Department of Health;  
LBB Staff: JO, JH, GR, PA



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HOUSE OF REPRESENTATIVES

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